

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Hannah Sampson	Team: Squad #9	CCRB Case #: 201706135	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 07/23/2017 3:40 AM, Wednesday, 07/26/2017	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 75	18 Mo. SOL 1/23/2019	EO SOL 1/23/2019	
Date/Time CV Reported Fri, 07/28/2017 2:09 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 07/28/2017 2:09 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. Officers			075 PCT
2. POM Samuel Hui	28856	953978	075 PCT
3. SSA Robert Martinez	01369	922716	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mahmudul Bhuiyan	19636	953682	075 PCT
2. POM Ramil Casimir	11100	950170	075 PCT
3. POM Michael Kaminsky	05135	944689	075 PCT
4. POM Alexis Yanez	23098	953586	075 PCT
5. POM Giovanni Fini	17137	946988	075 PCT
6. POM William Schumacher	04618	949640	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Samuel Hui	Force: On July 23, 2017, Police Officer Samuel Hui used physical force against § 87(2)(b) in the vicinity of § 87(2)(b) in Brooklyn.	[REDACTED]
B.SSA Robert Martinez	Abuse: On July 26, 2017, Sergeant Robert Martinez entered § 87(2)(b) in Brooklyn.	[REDACTED]
C. Officers	Abuse: On July 26, 2017, officers entered § 87(2)(b) in Brooklyn.	[REDACTED]
D. Officers	Abuse: On July 26, 2017, officers searched § 87(2)(b) in Brooklyn.	[REDACTED]

Case Summary

On July 28, 2017, § 87(2)(b) filed this complaint with the CCRB via telephone.

On July 23, 2017, at approximately 3:40 A.M., § 87(2)(b) was arrested in the vicinity of § 87(2)(b) in Brooklyn. After being handcuffed, PO Samuel Hui of the 75th Precinct, allegedly pushed him to the ground (**Allegation A: Force; § 87(2)(g)**). § 87(2)(b) was charged with § 87(2)(b)

§ 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

On July 26, 2017, at approximately 5:40 A.M., officers arrived at § 87(2)(b)'s residence, located at § 87(2)(b) in Brooklyn. Sgt. Robert Martinez, also of the 75th Precinct, and officers entered the apartment and arrested § 87(2)(b) (**Allegations B and C: Abuse of Authority; § 87(2)(g)**). After § 87(2)(b) was handcuffed, three officers searched the sofa § 87(2)(b) was previously lying on (**Allegation D: Abuse of Authority; § 87(2)(g)**). § 87(2)(b) was arrested for § 87(2)(b)

§ 87(2)(b) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b) a witness to the incident on July 23, 2017, provided footage from his residence at § 87(2)(b) [BR 08]. The footage does not capture the allegation that an officer pushed § 87(2)(b) to the ground. § 87(2)(g) Video footage from NYCHA was obtained for the incident on July 26, 2017 [BR 25]. However, it does not capture the alleged misconduct.

Findings and Recommendations

Allegation A – Force: On July 23, 2017, Police Officer Samuel Hui used physical force against § 87(2)(b) in the vicinity of § 87(2)(b) in Brooklyn.

It is undisputed that § 87(2)(b) led officers on a foot pursuit and sustained an abrasion to his knee and superficial cuts to his hip and wrists during this incident.

§ 87(2)(b) was interviewed at the CCRB on August 1, 2017 [BR 02]. He stated that while walking home from a party, an unmarked vehicle approached him in the vicinity of Folsom Place and Linwood Street in Brooklyn. § 87(2)(b) acknowledged consuming two cups of Hennessy at the party but denied being intoxicated. § 87(2)(b) thought he was going to be robbed so he fled the location. § 87(2)(b) jumped over a fence and hid in the rear of § 87(2)(b) who said he was “so fucked up” and tired that he could not stand, then observed an officer, identified by the investigation as PO Hui, appear at the top of the fence. PO Hui jumped over the fence and handcuffed § 87(2)(b). PO Hui then escorted § 87(2)(b) from the backyard. As soon as § 87(2)(b) was brought out from the yard, PO Hui pushed him to the ground. § 87(2)(b) sustained an abrasion to his knee as a result of being pushed to the ground.

§ 87(2)(b) and his wife, § 87(2)(b) reside at § 87(2)(b) in Brooklyn and witnessed this incident. They provided statements to the CCRB on August 8, 2017 [BRs 03 and 04]. § 87(2)(b) stated that at the time of § 87(2)(b)'s apprehension, she was standing by her front door and could only see the backyard if she leaned forward. As a result, § 87(2)(b) did not observe anything that transpired between § 87(2)(b) and the officers in the backyard. As § 87(2)(b) was escorted to the patrol vehicle, § 87(2)(b) said, “Ouch this hurts” and was yelling

that the officers were hurting him. However, officers were holding § 87(2)(b) by the arms and walking him out of the yard when he made these statements. § 87(2)(b) did not observe an officer push § 87(2)(b) to the ground and did not see § 87(2)(b) on the ground at any point.

§ 87(2)(b) stated that he saw the entire incident from the time the officers found § 87(2)(b) in the backyard to the time he was brought to the vehicle, with the exception of a second or two as the officers reached the end of his driveway. Once the officers moved the gate § 87(2)(b) was hiding behind, he was pulled out upright and sideways. After § 87(2)(b) was brought out from behind the gate, two officers handcuffed him. As the officers handcuffed him, § 87(2)(b) said, "Ow, you're hurting me." § 87(2)(b) continued complaining that he was in pain as the officers brought him down the driveway. Two officers were walking with § 87(2)(b) and each had one hand on his shoulder and one on § 87(2)(b)'s forearm. § 87(2)(b) did not see an officer push § 87(2)(b) or use any force against him. § 87(2)(b) did not see § 87(2)(b) on the ground at any point.

PO Hui was interviewed at the CCRB on December 20, 2017 [BR 05]. He stated that he climbed onto a pile of wood and looked down into the enclosed area where § 87(2)(b) was hiding. After 30 seconds, PO Hui left the backyard to canvass for a firearm. PO Hui did not see § 87(2)(b) again and denied pushing him to the ground or touching him at any point.

Sgt. Martinez provided a statement on February 16, 2018 [BR 06]. He stated that he climbed down to § 87(2)(b) and handcuffed him with no issue. Sgt. Martinez then held § 87(2)(b) so he did not fall and immediately handed § 87(2)(b) off to an officer on the other side of the fence. Sgt. Martinez did not know who took hold of § 87(2)(b) at that point and denied observing an officer push § 87(2)(b) to the ground at any point.

PO Mahmudul Bhuiyan of the 75th Precinct was interviewed at the CCRB on October 19, 2017 [BR 07]. He stated that he observed § 87(2)(b) hiding in the backyard and again after he was handcuffed and being escorted from the yard. PO Bhuiyan did not observe an officer push § 87(2)(b) to the ground. PO Bhuiyan was later informed by a supervisor that EMTs from Central Booking said § 87(2)(b) had minor scrapes that needed to be noted in a report for the guards. PO Bhuiyan did not have any prior knowledge of these injuries. Because PO Bhuiyan was the arresting officer, he completed the TRI Report for the incident [BR 18]. The report notes that no force was used against § 87(2)(b) and that he sustained minor superficial cuts and bruises to his knees while climbing fences to evade police. § 87(2)(b)'s arrest report does not indicate any force was used against him [BR 26].

As noted above, § 87(2)(b) provided surveillance footage from the rear of § 87(2)(b) in Brooklyn. The footage shows § 87(2)(b) falling to the ground from a backyard patio umbrella.



2018-04-06_10-59-50.mp4

§ 87(2)(g)

Allegation B – Abuse of Authority: On July 26, 2017, Sergeant Robert Martinez entered § 87(2)(b) in Brooklyn.

Allegation C – Abuse of Authority: On July 26, 2017, officers entered § 87(2)(b) in Brooklyn.

It is undisputed that officers entered § 87(2)(b) in Brooklyn. § 87(2)(b)

§ 87(2)(b) stated that he was asleep on a sofa in the living room when he woke up to a knock on the door. The sofa is located two to three feet from the door to the apartment. § 87(2)(b) went to the door and opened it four to five inches. § 87(2)(b)'s mother, § 87(2)(b) was in her bedroom at the time. An officer mentioned § 87(2)(b)'s name and § 87(2)(b) responded, "Yeah that's me." The officers then pushed the door open and forced their way inside. § 87(2)(b) did not hear § 87(2)(b) grant the officers permission to enter and did not hear an officer ask permission to enter. § 87(2)(b) turned his back to the officers as they entered.

§ 87(2)(b) provided phone statements on September 25, 2017, and October 27, 2017 [BRs 10 and 11]. He stated that he opened the door and officers told him they wanted to speak to § 87(2)(b). § 87(2)(b) told the officers § 87(2)(b) was on the sofa, gestured towards § 87(2)(b) and stepped back from the door to allow the officers to enter.

§ 87(2)(b) provided a phone statement on September 13, 2017 [BR 13]. She said that she did not recall the incident very well but said she was in her bedroom while § 87(2)(b) was at the door. § 87(2)(b) did not observe the entry and could not say whether § 87(2)(b) provided verbal or physical consent for the officers to enter.

Sgt. Martinez stated that § 87(2)(b) came to the door and opened it fully. Sgt. Martinez told § 87(2)(b) that they needed to speak to § 87(2)(b). At that point, § 87(2)(b) turned sideways, gestured towards § 87(2)(b) and said, "He's right there/there he is." Sgt. Martinez interpreted her statements and actions as consent to enter the residence. At that point, Sgt. Martinez, and possibly a few of his Anti-Crime officers, entered the residence.

PO Michael Kaminsky of the 75th Precinct provided a statement to the CCRB on February 28, 2018 [BR 14]. He also stated that § 87(2)(b) answered the door and opened it fully. PO Kaminsky believed Sgt. Martinez then asked if § 87(2)(b) was inside. § 87(2)(b) responded, "Yes, he is sleeping right there on the ground," pointed to § 87(2)(b) and said the officers could come inside. PO Kaminsky, Sgt. Martinez, and other members of the Anti-Crime team then entered the apartment. Aside from Sgt. Martinez, PO Kaminsky did not know the identities of the Anti-Crime officers involved in this incident. PO Kaminsky did not recall if his partner, PO Giovanni Fini of the 75th Precinct, also entered the apartment.

PO Fini was interviewed at the CCRB on March 29, 2018 [BR 15]. He stated that he knocked on the door and within one minute § 87(2)(b) said, "Who is it?" PO Fini responded "Police." At that point, § 87(2)(b) opened the door approximately six inches to one foot. PO Fini asked if § 87(2)(b) was home and she said yes. PO Fini asked where § 87(2)(b) was and § 87(2)(b) pointed to § 87(2)(b) and said he was on the couch. PO Fini asked if they could speak to him and § 87(2)(b) said, "Sure, come in" and opened the door fully. At that point, PO Fini, PO Kaminsky, PO Yanez, Sgt. Martinez, and PO Hui entered the apartment. PO Fini did not recall the other officers that may have also entered.

PO Ramil Casimir [BR 16] and PO Alexis Yanez [BR 17], both of the 75th Precinct, were interviewed on February 21, 2018, and April 4, 2018, respectively. PO Casimir, PO Yanez, PO

Bhuiyan, and PO Hui all stated that they were not at the doorway at the time of the initial entry into the apartment. As per the 75th Precinct Roll Call, PO William Schumacher was also assigned to Anti-Crime during this incident [BR 19]. He was not interviewed § 87(2)(g)

§ 87(2)(g)

People v. Davis, 120 A.D.2d 606 (1986) states that consent can be established by conduct as well as words and that an individual's conduct in stepping aside from the door to allow officers to enter is enough to establish consent [BR 20].

As per People v. Rivas, 182 A.D.2d 722 (1992), consent to enter can be granted by motioning to the officers that they may enter [BR 21].

§ 87(2)(g)

§ 87(2)(g)

Allegation D – Abuse of Authority: On July 26, 2017, officers searched § 87(2)(b)

in Brooklyn.

§ 87(2)(g)

§ 87(2)(b) stated that after he was handcuffed, three officers searched the sofa he was lying on. The officers lifted the cushions up, looked down into the sofa, and felt around it. Nothing else in the apartment was searched. § 87(2)(b) described one officer involved as an "Indian" male, approximately 120 to 130 pounds, 5'5" or 5'6" tall, 32 years old, with black hair and black eyes, dressed in plainclothes. He described the second officer as a white or Hispanic male, approximately 160 pounds, 5'7" tall, 33 to 34 years old, with black hair, dressed in plainclothes. § 87(2)(b) described the third officer as a male in plainclothes but could not describe him further. § 87(2)(b) and § 87(2)(b) were also consistent that officers searched the sofa but failed to describe the officers involved.

PO Fini stated that § 87(2)(b) was immediately handcuffed and acknowledged that one of the Anti-Crime officers, whom he could not identify, did lift up/overturn two pillows on the sofa § 87(2)(b) was seated on. PO Fini did not recall which Anti-Crime officer took this action and stated that no officer provided a reason as to why the pillows were overturned. A more in

depth search of the sofa was not performed and no one inside the apartment objected to the search.

Sgt. Martinez, PO Bhuiyan, PO Hui, PO Casimir, PO Yanez, and PO Kaminsky denied that a sofa was searched. As noted above, the 75th Precinct Roll Call suggests PO Schumacher was present for this incident; however, he was not interviewed § 87(2)(g)

§ 87(2)(g)

In *Chimel v. California*, 395 U.S. 752 (1969), the U.S. Supreme Court ruled that officers may search the area within an individual's immediate control as incident to the arrest. The search must be contemporaneous in time with the arrest [BR 22].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to two CCRB complaints and has been named as a victim in five allegations [BR 12].
 - § 87(2)(b)
- Sgt. Robert Martinez has been a member-of-service for 19 years and has been a subject in 36 CCRB complaints and 116 allegations, of which 16 were substantiated:
 - 200205713 involved an allegation of discourtesy (word) against Sgt. Martinez. The Board recommended Charges and the NYPD imposed Command Discipline A.
 - 200704280 involved substantiated allegations of physical force and a threat of force against Sgt. Martinez. The Board recommended Charges and the NYPD declined to prosecute.
 - 201101407 involved substantiated allegations of a stop and frisk against Sgt. Martinez. The Board recommended Command Discipline and the NYPD imposed Instructions. § 87(4-b) § 87(2)(g)
 - 201310387 involved a substantiated allegation of physical force against Sgt. Martinez. The Board recommended Charges and the NYPD imposed a forfeiture of 10 vacation days.
 - 201508658 involved substantiated allegations of discourtesy (word) and discourtesy (action) against Sgt. Martinez. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
 - 201510169 involved substantiated allegations of a stop, frisk, and search (of a person) against Sgt. Martinez. The Board recommended Command Discipline B and the NYPD imposed Command Discipline B. § 87(4-b) § 87(2)(g)

§ 87(4-b) § 87(2)(g)

- 201606105 involved a substantiated allegation of Abuse – Other (detainment) against Sgt. Martinez. The Board recommended Command Discipline B and the NYPD imposed no penalty. § 87(4-b) § 87(2)(g)
- 201610287 involved substantiated allegations of a vehicle search, discourtesy (word), frisk, and interference with a recording device against Sgt. Martinez. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.
- § 87(2)(g)
- PO Hui has been a member-of-service for five years and has been a subject in five CCRB complaints and 14 allegations, of which three have been substantiated:
 - 201610413 involved substantiated allegations of a vehicle search, discourtesy (action) and a frisk against PO Hui. The Board recommended Command Discipline A and the NYPD has not yet imposed discipline.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- As of March 23, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint [BR 23].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: ____9____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date

